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State of California

Department of Fish and Game

Memorandum

Date: October 11, 2010

To: Jon Fischer, Acting Executive Director
Fish and Game Commission

From: John McCamman, Director
Department of Fish and Game

Subject: Agenda Item for October 20-21, 2010 Fish and Game Commission Meeting Re: Report on outstanding issues identified in the proposed Initial Statement of Reasons to Amend Section 632 Title 14, CCR Re: Marine Protected Areas in California South Coast Study Region pursuant to the Marine Life Protection Act

The Fish and Game Commission (Commission), at its April 7, 2010 meeting in Monterey, approved the Department of Fish and Game (Department) request to go to notice with proposed regulations for the preferred alternative for Marine Protected Areas (MPAs) within the California South Coast Study Region (defined as Point Conception to the US border with Mexico). The Commission directed the Department, prior to going to notice, to incorporate revisions and options into the MPA regulations language as described in the Department March 2010 report to the Commission^a and presented to the Commission on April 7, 2010. As directed, the ISOR was prepared and notice was published on September 17, 2010.

Subsequent to the Commission's direction to go to notice, several issues not addressed within the ISOR were brought to our attention. Three relate to activities within proposed MPAs that were not expressly accommodated as in other proposed MPAs, and three relate to proposed regulated activities within MPAs that do not match the intent of the proposal forwarded by the Blue Ribbon Task Force (BRTF). The Department considers these issues to be legitimate concerns, and addressing these issues to be consistent with direction previously provided by the Commission. If the Commission provides direction to incorporate changes into the proposed regulations, it would require a 15 day re-notice of the ISOR. A re-notice would not delay the scheduled adoption date of December 15, 2010.

Table 1 provides a summary of the newly-identified issues and potential action for

^a Department of Fish and Game Report to the Fish and Game Commission on Unresolved Issues and Potential Options for the Integrated Preferred Alternative of the Marine Life Protection Act in the South Coast Study Region (March 2010).

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the Commission to consider. The Department requests to receive direction from the Commission at its October 20, 2010 meeting regarding how to address these issues.

If you have further questions or need additional information, please contact Ms. Marija Vojkovich, Regional Manager in the Department's Marine Region, by telephone at (805) 568-1246.

Attachment(s)

cc: Marija Vojkovich, Regional Manager, Marine Region

Table 1. Summary of outstanding issues identified subsequent to the April 2010 California Fish and Game Commission (Commission) meeting and potential actions to address these issues within proposed regulations for the Marine Life Protection Act South Coast Study Region. SMR= State Marine Reserve and SMCA= State Marine Conservation Area.

MPA Name	Type of Issue	Description of Issue	Potential Action
Campus Point SMR	Artificial structures and activities regulated by other entities	Oil and natural gas pipes have been identified within the boundaries of this proposed MPA. Ongoing operation and maintenance of these artificial structures may result in take, and prevent designation as an SMR.	Regulation language may be added to allow operation and maintenance of artificial structures pursuant to any required permits or as authorized by the Department. Requires change in designation to an SMCA.
Upper Newport Bay SMCA	Description of restricted activities	This MPA modifies an existing MPA within an Ecological Reserve with restrictions also specified under Section 630. Existing restrictions to swimming, boating and shoreline access in waters inside the Upper Newport Bay Ecological Reserve consistent with Section 630 were intentionally retained. However, the proposed boundaries expand the SMCA to the west of the ecological reserve boundary and overlap with a designated swimming beach. The restrictions are not intended to apply to the area outside the ecological reserve.	Regulatory language may be revised to specify that restrictions on swimming, boating, and shoreline access apply only to waters within the Upper Newport Bay Ecological Reserve.
Crystal Cove SMCA and Dana Point SMCA	Description of restricted activities	A discrepancy exists between the proposed take regulations for Crystal Cove SMCA and for Dana Point SMCA. A key objective identified for both of these SMCAs is to protect the tidepools while allowing for harvest of select species outside the tidepools. While Dana Point SMCA accomplishes this by specifying that recreational take is allowed below the mean lower low-tide line only, this language was not included in the Crystal Cove SMCA take regulations. This language could further be clarified to improve understanding of the intent of the regulation in both SMCAs.	Regulation language may be added to all ISOR options ¹ for Crystal Cove SMCA, and revised for Dana Point SMCA, to specify that recreational take is allowed only outside of tidepools, which are defined as the area encompassing the rocky pools that are filled with seawater due to retracting tides, between the mean lower low-tide line and the mean high-tide line. Note that this language would also need to be added to ISOR Option 2 ¹ for Robert E. Badham SMCA, which is intended to have the same take regulations as Crystal Cove SMCA.

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MPA Name	Type of Issue	Description of Issue	Potential Action
Laguna Beach SMCA and/or SMR (Issue 1)	Description of restricted activities	<p>Proposed regulations specify that "boats may be launched and retrieved only in designated areas; anchoring restricted to daylight hours." This restriction was retained from the existing MPA regulations at Heisler Park, which is subsumed into the Laguna Beach MPA.</p> <p>A review of supporting materials confirms that this restriction was not intended by the RSG or BRTF to be applied to the Laguna Beach MPA.</p>	Boat launching and anchoring restrictions may be removed from regulations language for all Laguna Beach MPA options ¹ in the ISOR.
Laguna Beach SMCA and/or SMR (Issue 2)	Artificial structures and activities regulated by other entities	<p>The current proposed regulations provide for operation and maintenance of artificial structures. The proposed regulation assumes that this is restricted to the southernmost portion of the proposed MPA where an outfall pipe bisects the MPA.</p> <p>However, other ongoing activities that may result in take have been identified to occur in a broader portion of this MPA than was originally understood and are not limited to maintenance of the outfall pipe currently accommodated. Other identified activities include beach grooming, maintenance dredging, habitat restoration, research and education, and seasonal installation and removal of safety structures (i.e., lifeguard towers).</p> <p>Except for restoration, research and education, accommodating these activities throughout the MPA prevents designation as an SMR.</p>	<p>Regulation language may be broadened in all options to allow operation and maintenance of artificial structures and facilities, beach grooming, maintenance dredging, habitat restoration, and seasonal installation of safety structures, pursuant to any required permits or as authorized by the Department.</p> <p>Also requires a change in designation from SMR to SMCA in ISOR Options 2 – 5¹.</p> <p>[Note that ISOR Option 2¹ (an SMR and no-take SMCA combination) would no longer be needed, as regulations would be identical and offered in ISOR Option 1¹.]</p>
Doheny Beach SMCA	Artificial structures and activities regulated by other entities	Artificial structures including an outfall pipe, facilities and slant drilling have been identified within the boundaries of this MPA that may result in take. They were not added to existing regulations language when the Commission added Option 2 ¹ in the ISOR to retain this existing MPA.	Regulation language may be added to Doheny Beach SMCA ISOR Option 2 ¹ , to allow operation and maintenance of artificial structures and facilities pursuant to any required permits or as authorized by the Department.

1- Options referenced in this table can be viewed in the Fish and Game Commission Notice of Proposed Changes in Regulations for Section 632, Title 14, California Code of Regulations, relating to marine protected areas, at <http://www.fgc.ca.gov/regulations/new/2010/632ntc.pdf>.